

On request, The Board of Registration of Hazardous Waste Site Cleanup Professionals (“the Board”) gives opinions on the applicability of the statutes and regulations that it enforces.¹ Advisory Rulings, as they are called, interpret any of the Rules of Professional Conduct in 309 CMR 4.00. The goal is to provide Licensed Site Professionals (“LSPs”) with guidance for interpreting the standards of professional practice.²

The Board’s regulations at 309 CMR 5.02 describe how to submit a request for an Advisory Ruling. The request must be in writing and concern a prospective, factual situation. Next, the Board does not respond to frivolous, duplicative, or otherwise inappropriate requests. Moreover, the Board does not answer hypothetical or abstract questions or questions that lack a factual basis. Beyond that, the Board does not provide Advisory Rulings on questions that raise legal issues or which are the subject of pending or likely litigation.³

Although Advisory Rulings are confidential, the substance of the inquiry is available, with identifying information stricken. Any ruling rendered by the Board is binding in subsequent proceedings if the LSP acted in good faith and no material facts were misstated or omitted. Furthermore, Advisory Rulings do not “supersede any existing law, regulation, or previous advisory ruling, nor do they create any right, benefit, or responsibility, substantive or procedural that can be enforced against the Board, its members or LSP staff.”⁴ Finally, in some limited circumstances, the Board may issue “Informal Guidance” instead of an Advisory Ruling;

¹ See generally 309 CMR 5.00.

² *The Licensed Site Professional Advisory Committee’s Report to the Massachusetts Department of Environmental Protection*, (March 23, 1992), (“Report”) first met on August 29, 1991. “Its twelve members represented a range of interests in the redesigned waste site cleanup program generally and the concept of licensing waste site cleanup professionals in particular.” See Report at p. 3. The Committee’s express intent was “that over time, a body of advisory rulings would develop which would help guide the actions of the profession and relieve the Board of the necessity of responding to frequent requests for rulings.” See Report at p. 37.

³ See 309 CMR 5.01(3)-5.02(1).

⁴ See 309 CMR 5.01(3)-5.02(1).

if for example, a request fails to state clearly and concisely the substance or nature of the request, including all relevant and material facts pertinent to the request.⁵

Request for Advisory Ruling No. 2011-01 (November 21, 2011), illustrates the Board's attempt to grapple with both procedural and substantive issues. In that request, a site was the source of a plume of dissolved contaminants. As part of an Immediate Response Action, a Point of Entry Treatment System ("POETS") was installed to treat the on-site private supply water well. The LSP was of record for Owner 1 and subsequently Owner 2, who retained him when he purchased the property. Owner 2 asked the LSP to discontinue operation of the POETS. With 309 CMR 4.03(4)-(6) in mind, the LSP communicated his concerns regarding discontinuation of the treatment system to his client. He explained that the system continued to remove low levels of contamination. He went on to state that shutdown could result in an ingestion of water that violated Massachusetts Contingency Plan Drinking Water Standards. *See* 310 CMR 40.0974. The LSP also notified the Department of Environmental Protection of his client's position.

The LSP's request for an Advisory Ruling asked three questions: first, whether his communications satisfied the notice requirements of 309 CMR 4.03(4); second, whether his communications satisfied the notice requirements of 309 CMR 4.03(6); and third, whether his communications met the requirements of 309 CMR 4.03(1).⁶ In the end, the Board declined to

⁵ *See* 309 CMR 5.02(4).

⁶ The Advisory Ruling implicated: 309 CMR 4.03(1) A licensed site professional shall hold paramount public health, safety, welfare, and the environment in the performance of professional services; 309 CMR 4.03(4) If a licensed site professional identifies a release or threat of release that in the LSP's professional judgment poses or could pose an Imminent Hazard as described in [310 CMR 40.0321](#) at a particular site at which he or she is providing Professional Services, he or she shall: (a) immediately advise his or her client of the need to notify the Department of the Imminent Hazard; and (b) notify the Department of the imminent hazard no later than 24 hours after identifying such, unless the client has provided such notice; and 309 CMR 4.03(6) In the event a licensed site professional knows or has reason to know of an action taken or a decision made by his or her client with respect to a particular aspect of the licensed site professional's professional services that significantly deviates from any scope of work, plan, or report developed to meet the requirements of M.G.L. c. 21E, 310 CMR 40.0000, or an order of the Department, then the licensed site professional shall promptly notify his or her client in writing of such.

issue an Advisory Ruling based on the fact that the circumstances the LSP described did not constitute a “prospective factual situation.” The Board did in any event conclude that it could render “Informal Guidance,”⁷ which cautioned the LSP to exercise his own independent professional judgment and perform services in a way that maintained compliance with the Massachusetts Contingency Plan as well as 309 CMR 40.00, the Rules of Professional Conduct. The Board further reminded the LSP that he could withdraw as LSP of record if noncompliance was unavoidable.

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⁷ Past Advisory Rulings have followed the same approach. *See e.g.* Request for Advisory Ruling No. 07-01 (September 13, 2007); Request for Advisory Ruling No. 98-01 (December 21, 1998).